

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MATHIS,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 242188

Wayne Circuit Court

LC No. 99-005606

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of carjacking, MCL 750.529, fleeing and eluding, MCL 257.602a(3), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to fifteen to thirty years' imprisonment for the carjacking conviction, twenty-three months to five years' imprisonment for the fleeing and eluding conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appealed as of right, and this Court remanded the case to the trial court for resentencing on the carjacking conviction, but affirmed in all other respects. *People v Mathis*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2002 (Docket No 227336). On remand, the trial court sentenced defendant to 168 months to 5 years' imprisonment for that conviction. He again appeals as of right. We affirm.

Defendant now argues on appeal that, while his sentence is within the appropriate guidelines range, he is nonetheless entitled to have his sentence reviewed for an abuse of discretion, and that, upon review, this Court should find that defendant's sentence was disproportionate and that the trial court's refusal to downwardly depart from the guidelines range was an abuse of discretion.

In reviewing a sentence that is not within the sentencing guidelines range, this Court must determine whether the trial court articulated substantial and compelling reasons for its departure from the range. MCL 769.34(11); *People v Babcock*, 469 Mich 247, 265; 666 NW2d 231 (2003). However, if the sentence is within the appropriate guidelines range, this Court must affirm the sentence unless it is shown that the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence. MCL 769.34(10); *Babcock*, *supra*.

MCL 769.34(10) limits the power of the Court of Appeals to review sentences that are within the statutory sentencing guidelines range. While defendant acknowledges that MCL 769.34(10) precludes appellate review, he argues that the statute is unconstitutional as a violation of separation of powers, due process, and the state constitutional right to appeal. We disagree.¹

It is well established that the Legislature's decision to delegate sentencing discretion in whole or in part does not offend the separation clause, Const 1963, art 3, and § 2. See *People v Hall*, 396 Mich 650, 658; 242 NW2d 377 (1976). "The ultimate authority to provide penalties for criminal offenses is constitutionally vested in the Legislature." *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001), citing Const 1963, art 4, § 45. The judiciary is charged with imposing sentences and administering the legislative guidelines, and the Legislature has the power to both grant discretionary authority to the courts and limit that authority. *Hegwood*, *supra* at 436-437, 440. Accordingly, it cannot be said that a limit imposed by the Legislature on the judiciary, such as the one in MCL 769.34(10), violates the constitutional provision mandating separation of powers. See e.g., *Hegwood*, *supra*. Moreover, because the Michigan Constitution's grant to the Legislature of the ultimate authority to determine the appropriate sentencing scheme is broad, it cannot be said that the Legislature's limit on appellate review operates to deny defendant due process. Finally, while MCL 769.34(10) precludes appellate review of the proportionality of a sentence that is within the appropriate statutory guidelines range, it does not preclude review of the scoring of the guidelines or the accuracy of the information relied on in determining the sentence. Therefore, it cannot be said that MCL 769.34(10) violates the constitutional guarantee of an appeal by right.

Defendant does not dispute that his sentence of 168 months to 30 years is within the appropriate recommended guidelines range of 81 to 168 months. While defendant argues that there were substantial and compelling reasons to warrant a downward departure, he has failed to demonstrate that there was an error in scoring the sentencing guidelines or that the trial court relied on inaccurate information in determining his sentence. Accordingly, this Court must affirm defendant's sentence. MCL 769.34(10). Even if the decision were subject to review we would find no abuse of discretion.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper

¹ We note that while defendant did not specifically state in his statement of the questions presented that MCL 769.34(10) is unconstitutional, he did question whether he is entitled to appellate review of his sentence for proportionality. Thus, we deem this issue as properly presented for review.